

Chapter 6

The Department of Environmental Protection

(Proposed Changes Affecting the Water Boards are **Highlighted**)

INTRODUCTION

California once led the nation in its work to protect the environment. California passed the Air Pollution Control Act in 1947, five years before the federal government enacted comprehensive legislation regulating air pollution. Today, while California is still a pioneer in its efforts to protect the environment, the organization of its statewide environmental protection agency has fallen behind the times.

The California Environmental Protection Agency (Cal-EPA) was created in 1991 to reorganize California's environmental programs. Unfortunately, while the goal of the reorganization was to create an integrated environmental protection program, Cal-EPA continues to operate as a collection of boards and commissions without a unified environmental protection strategy. The way hazardous materials are regulated and toxic waste is cleaned up exemplifies the fragmented nature of California's public health and environmental protection efforts.

Three agencies within Cal-EPA, and other entities not under its control are principally responsible for toxic cleanup. Instead of added protection this fragmentation means agencies are not sure how many toxic cleanup sites exist; different cleanup processes and standards are used by each agency for the same toxic contaminants under identical circumstances; and, for any given cleanup, it is unclear which agency is responsible. Organizational obstacles have blocked ad hoc, intra-agency, and even legislative attempts to resolve this situation. Continuing population growth and development in California demand that efforts to keep the air, land and water clean must be efficient and focused.

FINDINGS OF THE CALIFORNIA PERFORMANCE REVIEW

The California Performance Review found that the current organization of Cal-EPA has four key problems:

1. The current framework for environmental regulation lacks accountability.

Responsibility for environmental and public health protection is divided between 16 legislatively created independent boards and commissions, including: the Air Resources Board, the Integrated Waste Management Board, the Water Resources Control Board and the regional Water Resources Control Boards. The members of these boards and commissions are not accountable to the Secretary or the Governor. As a result, it is difficult to implement a coherent environmental protection policy.

- 2. Environmental decisions do not reflect an integrated understanding of different types of pollution.** Because each board or commission is responsible for a specific type of pollution, decision-makers do not focus on how their choices affect other areas of the environment. For instance, MTBE, a gasoline additive created to reduce air pollution, resulted in severe water pollution in the Santa Monica and Lake Tahoe basins.
- 3. There is significant overlap in jurisdictional functions within Cal-EPA.** For example, the Department of Toxic Substances Control and the regional Water Quality Control Boards both have jurisdiction over cleaning up certain hazardous materials in the land and water. This duplication wastes resources and makes responsibilities unclear.
- 4. Environmental programs are dispersed throughout government.** Responsibility for water quality, waste management, and responding to environmental emergencies are still split between the Department of Health Services, the Resources Agency and Cal-EPA.

PROPOSED ORGANIZATIONAL IMPROVEMENTS

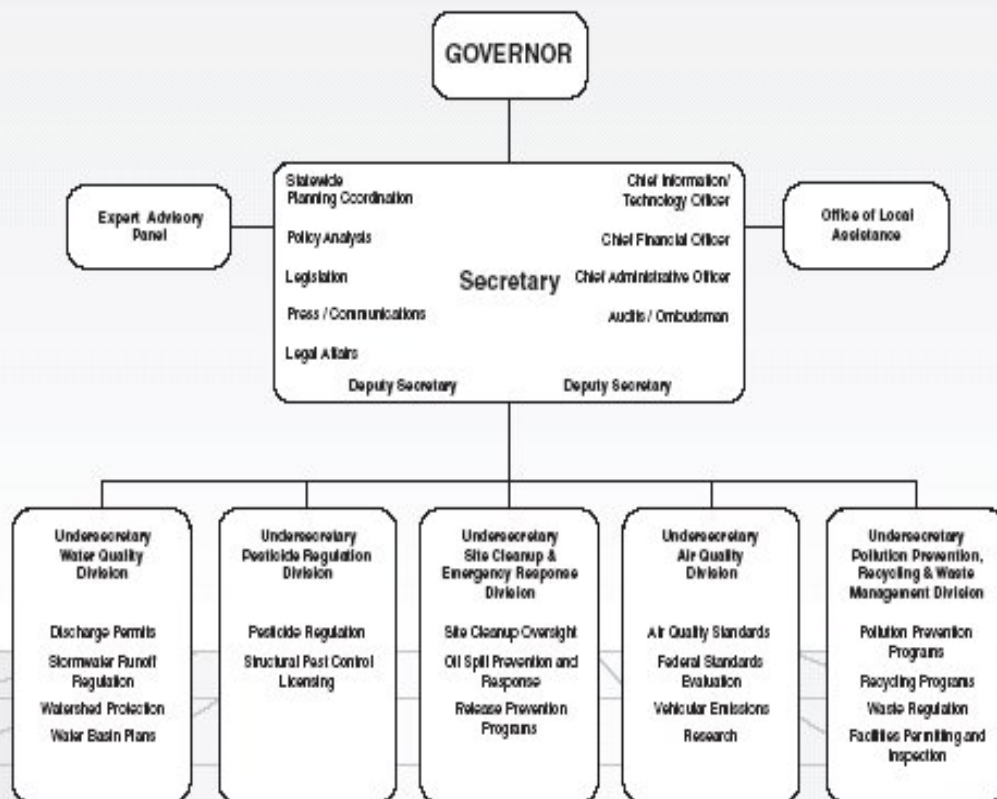
The proposed framework would transform Cal-EPA from a collection of separate boards and commissions into an integrated Department of Environmental Protection to effectively protect California's environment.

Specifically, the Department of Environmental Protection should include the following organizational units:

- Office of the Secretary for Environmental Protection;
- Division of Air Quality;
- Division of Water Quality;
- Division of Pollution Prevention, Recycling and Waste Management;
- Division of Site Cleanup and Emergency Response; and
- Division of Pesticide Regulation.

This organizational framework is depicted below.

Proposed Environmental Protection Department



A. Office of the Secretary

1. **Management Goal:** The Secretary of the Department of Environmental Protection should be directly accountable for the protection of California's environment. The Secretary should provide an integrated perspective on environmental protection that takes into account air, water, and solid waste pollution. The Secretary should also reduce overhead costs by consolidating administrative functions within the Department.
2. **Purpose and Functions:** The Secretary should serve as the primary point of accountability for managing environmental protection programs, reporting directly to the Governor. The Secretary should lead the divisions within the new Department.
3. **Transferred Functions:** All program support functions should be transferred to the Office of the Secretary, including administrative services (information technology, budgets and accounting, personnel and business services), legal counsel, public affairs, legislative affairs and regulatory and policy development from the boards, departments and offices of Cal-EPA.

B. Division of Air Quality

1. **Management Goal:** The goal of the Division of Air Quality should be to keep California's air clean in the most efficient and effective way possible.
2. **Purpose and Functions:** The Division of Air Quality should protect air quality by establishing air quality standards for specific pollutants, developing and implementing plans to reach and maintain these clean air standards, evaluating federal standards, conducting research studies and setting emission limits for vehicular and industrial sources.
3. **Transferred Functions:** All functions of the Air Resources Board should be transferred to the Division of Air Quality.

C. Division of Water Quality

1. **Management Goal:** The goal of the Division of Water Quality should be to protect California's water resources in a way that is accountable to the public.
2. **Purpose and Functions:** The Division of Water Quality should protect and restore water quality by issuing water discharge permits, regulating storm water runoff, protecting watersheds and producing water basin plans.
3. **Transferred Functions:** The water quality functions from the State Water Resources Control Board and nine Regional Water Quality Control Boards; and the Drinking Water Branch and the Shell Fish Monitoring Program from the Department of Health Services should be transferred to the Division of Water Quality.

D. Division of Pollution Prevention, Recycling and Waste Management

1. **Management Goal:** The goals of the Division of Pollution Prevention, Recycling and Waste Management should be to regulate the disposal of solid waste to maximize recycling, minimize the impact of solid waste on the environment and help citizens and businesses do their part to protect the environment.
2. **Purpose and Functions:** The Division of Pollution Prevention, Recycling and Waste Management should administer pollution prevention and recycling programs; permit and inspect facilities and operations; and create policies and enforce laws and regulations for solid, hazardous, radiological and medical waste.
3. **Transferred Functions:** The following functions and programs should be transferred to the Division of Pollution Prevention, Recycling and Waste Management:
 - Division of Recycling from the Department of Conservation;
 - Diversion, Planning and Local Assistance Division from the Integrated Waste Management Board;
 - Waste Prevention and Market Development Division from the Integrated Waste Management Board;
 - Special Waste Division from the Integrated Waste Management Board;

- Office of Pollution Prevention from the Department of Toxic Substances Control;
- Hazardous Waste Management Program and the Hazardous Materials Laboratory from the Department of Toxic Substances Control;
- Radiological Health Branch from the Department of Health Services (with the exception of the Registration, Certification, Mammography and Standards Section);
- Environmental Management Branch from the Department of Health Services;
- Permitting and Enforcement Division from the Integrated Waste Management Board; and
- Functions and staffing from the State Water Resources Control Board and the Regional Water Quality Control Boards that deal with solid waste management.

E. Division of Site Cleanup and Emergency Response

- 1. Management Goal:** The goals of the Division should be to respond to environmental emergencies and clean up hazardous sites in a safe, timely and efficient manner.
- 2. Purpose and Functions:** The Division of Site Cleanup and Emergency Response should oversee the cleanup of sites contaminated with hazardous substances, conduct prevention programs and provide emergency cleanup response for oil spills, hazardous substance releases and illegal methamphetamine "labs."
- 3. Transferred Functions:** The following functions should be transferred to the Division of Site Cleanup and Emergency Response:
 - Underground Storage Tank Program from the State Water Resources Control Board;
 - Site cleanup and corrective action functions from the Department of Toxic Substances Control;
 - Human and Ecological Risk Division from the Department of Toxic Substances Control;
 - Site cleanup responsibility for Department of Defense sites from the Department of Toxic Substances Control and the State Water Resources Control Board;
 - Site cleanup functions in the Spills, Leaks, Investigations and Cleanup Program from the State Water Resources Control Board;
 - Remediation, Closure and Technical Services Branch from the Integrated Waste Management Board;
 - Oil Spill Prevention and Response Program from the Department of Fish and Game;

- Marine Facilities Division from the State Lands Commission;
- Spill prevention and response functions from the California Coastal Commission;
- Emergency Response Program from the Department of Toxic Substances Control; and
- Hazardous Materials Program from the Office of Emergency Services.

F. Division of Pesticide Regulation

- 1. Management Goal:** The Division's primary goal should be to regulate the use of pesticides in agriculture to keep food safe, promote worker safety and protect the environment. The Division of Pesticide Regulation should also strive to minimize the burden of regulation on the affected industries, consistent with public safety.
- 2. Purpose and Functions:** The Division of Pesticide Regulation should regulate the registration, sale and use of pesticides for indoor and outdoor use.
- 3. Transferred Functions:** All functions and staff from the Department of Pesticide Regulation and the Structural Pest Control Board within the Department of Consumer Affairs should be transferred to the Division of Pesticide Regulation.

Other Recommendations:

A. RES07 Reduce Overhead Costs of the California Environmental Protection Agency

Summary

There are six separate divisions of administrative services in the California Environmental Protection Agency located in the same building, providing the same services to the agency's six departments. The cost of providing these services can be significantly reduced by consolidating the six divisions into one administrative office.

Recommendation

The California Environmental Protection Agency, or its successor, should propose a consolidation plan for its six divisions of administrative services into one administrative services office located within the Office of the Secretary.

- The Secretary should appoint a Director of Administrative Services Consolidation to prepare a detailed implementation plan to consolidate administrative services by January 2005. The implementation plan should be effective April 1, 2005.
- Administrative staff reductions should be fully implemented by July 2006.

B. RES06 Consolidate Funding Programs for Clean Water Infrastructure

Summary

California manages federal loan funds for drinking water and clean water infrastructure in two different departments. This structure produces benefits to the public below the national average measured against the total funding spent by states for drinking water and clean water projects. High performance states have a consolidated management structure. California needs to consolidate its federal revolving fund programs for water infrastructure.

Recommendation

The Governor should work with the Legislature to consolidate the Revolving Fund at the California State Water Resources Control Board and the Drinking Water Fund at the Department of Health Services into a single office within the California Environmental Protection Agency, or its successor.

C. INF28 Water, Parks and Wildlife Bond Implementation is Inefficient

Summary

High overhead and administrative costs impact the effectiveness of water, parks and wildlife bond programs. Consolidating the administration of these programs would lower their administrative costs and increase their efficiency.

The State Water Resources Control Board (SWRCB) has taken a different approach by consolidating \$138 million in grants in a single proposal solicitation process among its related grant programs, including Proposition 50 Drinking Water Quality, Proposition 13 Drinking Water Quality, Proposition 50 Watershed, and Proposition 13 Watershed. This consolidated process and organization has allowed the most technically sound proposals to be awarded grants on an accelerated time scale of ten months. The SWRCB's approach demonstrates efficiencies can be realized by consolidating grant administration within a single agency, and could serve as a model. It further demonstrates if one agency contained a single division permanently devoted to grant administration that all the agencies could utilize, then it would not be necessary to start up a new self-contained grant unit for each element of a bond program. This would save considerable time at the beginning of the process, and lower administrative costs by eliminating duplication of effort.

Recommendations

- A. The Governor should direct the Secretaries for Resources, Health and Human Services and Environmental Protection, or their successors, to centralize the policy and administration of the grant program aspects of the existing Proposition 50, 40, 13 and 12 programs into a single division within the Resources Agency, or its successor.
- B. The Secretaries for Resources, Health and Human Services and Environmental Protection, or their successors, should direct the departments with technical expertise in the various areas that are named in the various bond initiatives to loan staff to the newly created division to assist in setting criteria and reviewing proposals. Staff would be funded by the bonds' administrative funds.

The division will be responsible for grant administration for all of the bond initiatives related to water quality, water supply, and parks and recreation. This service would be provided to all applicable agencies and departments. The division will require staff with appropriate legal, financial, accounting and contracting expertise. Funding for the division is available from the bonds' administrative funds. Staff for this new division could be redirected from the staff in the various agencies and departments currently performing these functions.

D. GG41 Amend the Administrative Procedure Act to do More with Less

Summary

The Administrative Procedure Act (APA) requires state agencies to adopt regulations in accordance with its provisions.[\[1\]](#) In the past 25 years, the APA has been amended several times and now includes numerous layers of housekeeping details that increase costs and delays, while adding little value to the resulting regulations. To ensure that the rulemaking process is efficient and useful to the public, the APA should be amended to add flexibility and streamline the process.

Recommendations

- A. The Governor should work with the Legislature to amend the Administrative Procedure Act (APA) to streamline the process.
 1. The APA should expressly permit and encourage negotiated rulemaking by adopting a process similar to the federal Negotiated Rulemaking Act, Title 5 United States Code Section 651 et seq.
 2. The APA should expressly permit direct final regulations
 3. Rulemaking documents should be simplified and returned to the original 1979 requirements. Specifically, the Notice of Proposed Action should only contain the following:
 - A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulations;

- Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific;
 - An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action and such other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations;
 - An estimate, prepared as prescribed by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Section 2231 of the Revenue and Taxation Code, other nondiscretionary cost or savings imposed on local agencies and the cost or savings in federal funding to the state; and
 - And the name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed. Similarly, the Initial and Final Statements of Reasons should only contain a general statement of the reasons for proposing the regulation and any necessary update of those reasons; and OAL review staff should be given the authority to make editing changes for format or similar issues that do not change the meaning of the regulations, without formal authorization from the rulemaking agency.
- B. The Office of Administrative Law should amend Title 1 Cal. Code of Regulations, Section 10 to clarify that the "necessity" for a regulation can be shown by establishing only the overall necessity for the provision rather than requiring the necessity of "each provision" to be established.

Chapter 8

The Department of Natural Resources

Summary

Similar functions are often separated within the Resources Agency and across the state.

Within the Resources Agency land management responsibilities are split between multiple departments. Additionally, legitimate resource management functions are not within the Agency at all. Water rights are currently managed by the Water Resources Control Board within Cal-EPA. This confuses the distinct issues of managing water rights and keeping water clean. It also prevents water rights management from being integrated into a larger examination of the use of California's natural resources.

Water Rights Board

Management Goal: The goal of the Board should be to allocate water rights in a fair, open and equitable way for the benefit of all Californians.

Purpose and Functions: The Water Rights Board should allocate water rights in California by issuing permits. The Board should also develop strategies to conserve and use the state's water resources while protecting vested rights, water quality and the environment.

Transferred Functions: The water rights functions of the State Water Resources Control Board should be transferred to this Division.

Evaluating California's Boards and Commissions

Summary

Boards and commissions conduct a variety of tasks in California state government. Some simply provide advice to departments, programs, or even other boards or commissions. Some hear denial of benefit appeals. Some enact regulations and establish policy. Others are responsible for licensing and disciplining professionals such as physicians, contractors, or guide dog trainers.

Some of these boards are highly paid, earning salaries of more than \$100,000 a year for only a few meetings. In fact, the 17 boards and commissions whose members are the highest paid cost the state more than \$9 million in board member salaries alone. While many boards and commissions are composed of volunteer members, they often have permanent staffs, pay rent, or create other costs for the state.

While the cost of the state's myriad boards and commissions is of concern, more important is the desire to ensure that California's governance structure is highly accountable. The line between the Governor and the performance of executive branch functions should be as straight as possible.

State Water Resources Control Board and Regional Water Quality Control Boards

Eliminate these Boards and replace them with 10 exempt officers appointed by the Governor (one to replace the state board and one to replace each regional board). The primary responsibility of the bodies for promulgating water quality regulations, implementing water monitoring programs, issuing water discharge permits and enforcing water quality regulations should be vested with the Division of Water Quality of the Department of Environmental Protection and its regional officers. Basin plans (three-year planning documents) should be developed by members appointed on an ad hoc basis for six months, after which time, having completed the plan, the group will be disbanded.